

# ***BEYOND*** **THE ROUNDHOUSE**

*a summary of interim legislative committee work*

***2010 Interim***

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## THE 2010 INTERIM IN BRIEF

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Legislative committee work during the 2010 interim began early and ended late. Barely two weeks after the legislature adjourned from its special session in March, the New Mexico Legislative Council appointed members to the interim body that would soon have the highest profile and, arguably, the heaviest workload for the year — the Government Restructuring Task Force. Over the next nine months, the task force met to examine the entire structure and operation of state government, rethink priorities and propose ways to ensure that programs are operated and services provided in the most effective and efficient manner. By the end of the interim, the task force crafted and endorsed several pieces of legislation that proposed to restructure state government and, in doing so, ease some of the state's fiscal woes.

Fiscal woes informed the work of all of the 2010 interim bodies. Under direction from the Legislative Council, all committees examined the programs and missions of the agencies they oversaw with an eye toward making those agencies more efficient and cost-effective, including ranking programs in terms of criticality to the agencies' core functions.

Different committees struggled with different facets of the fiscal issue. While the Investments Oversight Committee and Retirement Systems Solvency Task Force concentrated on the actuarial soundness and solvency of the state's retirement plans and retiree health care plan, the Legislative Health and Human Services Committee struggled with the implications of calling for a cut in human services when lives may be at stake. The Courts, Corrections and Justice Committee heard from the courts on pending court closures and employee furloughs, while the Revenue Stabilization and Tax Policy Committee heard testimony that furloughs and layoffs in the Taxation and Revenue Department would cost, rather than save, money as the collection of badly needed tax revenue would slow.

From the threat of road funding shortfalls to the possibility that the state may have to return tens of millions of dollars it received in the tobacco Master Settlement Agreement, legislators worked through the interim to a steady beat of challenging financial news. As the 2011 session neared, there was no shortage of proposed legislation to fix the state's finances — and no shortage of disagreement on how best to accomplish the task.

## COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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The Courts, Corrections and Justice Committee began the interim with an extensive hearing on a bill that would provide treatment instead of incarceration for drug possession offenders. The bill passed the house in the 2010 session. Two national experts from the Drug Policy Alliance as well as two district attorneys were on the panel. Costs, safety and the effectiveness of treatment for addiction were discussed, as well as 13 programs in other states that emphasize treatment, rather than jail time, for drug offenders. The district attorneys' primary objection to the bill seemed to be that it would take out of their hands and give to a judge the power to decide whether an offender should be treated for substance abuse or face conviction and incarceration.

The Children, Youth and Families Department presented some results and outcomes of the implementation of the Cambiar New Mexico method for rehabilitating juveniles. The department found less violence, a decrease in recidivism and overall improved safety. Incidents have declined in facilities; collaboration among staff has improved; and staff training is ongoing. Daily group sessions and better communication with youth have eased the transition to supervised release and the return to society. A legislator brought up a number of incidents that have occurred since this model was implemented.

Due to budget cuts, the Corrections Department has had to renegotiate medical and food service contracts, increase vacant positions, cut back on vocational programs and behavioral health services and reduce therapeutic communities. Interestingly, the secretary of corrections stated that the department has survived primarily by moving inmates from the privately run facilities to the public prisons. The department has more control over public prisons and their costs, whereas contracts with private prisons cannot be easily changed. There was much discussion on the monitoring of private prisons and the penalty assessments that the department may impose when contract obligations are not

met, especially regarding staffing patterns. The department has chosen not to impose any penalties despite long-term vacant staff positions. The committee requested that Legislative Finance Committee (LFC) staff review the private prison contracts and their enforcement and whether any penalties were imposed, especially with respect to staffing patterns. A report was published in September estimating that \$18.6 million in unpaid salaries was potentially eligible to be recovered by the department under the contracts.

The committee heard and discussed real estate issues this year. The committee examined issues concerning the Solar Rights Act and how local governments, homeowner associations and neighborhoods were addressing the rights given to homeowners to install solar collectors on their property. The committee addressed some of the conflicts arising between zoning laws and the Condominium Act. It also studied problems that homeowners and condominium owners are having with their associations and examined eminent domain issues, specifically with respect to the City of Rio Rancho. A work group was formed, consisting of legislators and public members, to study issues relating to homeowner and condominium associations. The group met and proposed two bills to the committee that were endorsed at the final meeting.

In August, the committee heard testimony on the controversy surrounding the relocation of the New Mexico DNA Identification System Administrative Center from the City of Albuquerque Police Department to the Department of Public Safety. After the hearing and the extensive discussion that followed, the committee resolved to write a letter to the governor requesting that he discuss the issue with the secretary of public safety and reconsider the relocation. The governor's chief of staff responded to the letter, indicating that the concerns raised by the committee were already fully discussed and considered.

A meeting in Las Cruces brought border issues to the attention of the committee. The committee heard from a consul general of Mexico who discussed the Merida Initiative, Mexico's relationship with the United States, Arizona's new law and the problems Mexico is facing and its response to those problems. An eight-member panel, including federal representatives, a U.S. Border Patrol chief and human rights advocates, addressed the committee and discussed border security, trends, communities, crime and intergovernmental agreements and the relationships between border communities and law enforcement. Senator Richard C. Martinez presented his bill on local enforcement of immigration laws in further discussion of the border and immigration issues.

The attorney general brought his legislative proposals, consisting of 14 bill drafts for legislation



and 16 concepts for legislation, to the committee. The proposals included criminal law, border issues, taxation, the environment, ethics and miscellaneous civil matters.

The judicial branch expressed the very real threat to its ability to function due to these unprecedented fiscal challenges. It has avoided furloughs by a grant of federal stimulus funds. However, unless the courts receive supplemental funding for fiscal year 2011, furloughs and court closings will be required after February 2011. The judiciary discussed its continuing efforts to perform its constitutional functions more efficiently and effectively. A 16-member reengineering commission, consisting of legislators, judges, chambers of commerce members and others, was recently created to oversee and hear recommendations from the National Center for State Courts (NCSC). The NCSC is conducting an extensive study on, and an examination of, all of the operations of the judiciary in order to make them more efficient and cost-effective. The judiciary discussed the increased number of case filings primarily due to foreclosures but also due to criminal cases. At the same time, the judiciary struggles with a decrease in resources. It proposed 13 pieces of legislation, all but one of which require no appropriation, to allow the judiciary to run more effectively.

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The committee examined many other issues throughout the interim, including certification of reserve officers, allegations of voter fraud, qualifications for DWI blood draws, incarceration of youth 18 to 21 years old, independent oversight of corrections and youth and elderly driving requirements. The committee also heard about the new, state-of-the-art FBI computer forensic laboratory at the University of New Mexico and the services and opportunities it will provide to New Mexico citizens.

During the interim, the committee toured the Penitentiary of New Mexico outside of Santa Fe; the Office of the State Medical Investigator in Albuquerque; and the MTC Otero County Processing Center, a privately run facility close to the border with Mexico that houses people accused of being in the United States illegally.

Forty legislative proposals were brought to, and examined by, the committee throughout the interim. The committee endorsed 31 bills for introduction in the 2011 legislative session.

## DISABILITIES CONCERNS SUBCOMMITTEE

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The Disabilities Concerns Subcommittee, a subcommittee of the Legislative Health and Human Services Committee, met once during the interim. At its August meeting, the subcommittee received testimony from LFC staff, the Department of Health and advocates on the current state of the developmental disabilities waiver program operated by the Department of Health. Subcommittee members, presenters and meeting attendees discussed concerns about financial management, caregiver training and maintaining participants' independence and quality of care. The subcommittee discussed provisions of the federal Patient Protection and Affordable Care Act that would have an effect upon persons living with disabilities. It heard testimony from the Governor's Commission on Disability regarding the commission's legislative recommendations and funding issues. The subcommittee recommended for endorsement by the Legislative Health and Human Services Committee a bill proposed by the commission that assesses fees at motor vehicle registration and allocates most of the fees to the Disability Fund to provide for services to persons living with disabilities.

## ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

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During the 2010 legislative interim, the Economic and Rural Development Committee focused on issues that are critical to the state's economic health, particularly in rural areas. The challenge of developing avenues of job creation was of particular importance and was the main focus of a number of presentations heard by the committee. The topics covered in the presentations included transportation infrastructure; emerging economic sectors and methods of attracting new businesses and cultivating existing ones; the federal American Recovery and Reinvestment Act of 2009; tourism initiatives; Spaceport America; the Las Cruces tax increment development district; the New Mexico Rural Development Response Council's work to increase rural broadband and youth entrepreneurship; the ongoing work of the New Mexico Small Business Development Center; and vocational education aimed at preparing students for jobs that are created in the state.

Committee members spent a good deal of energy assessing how oversight of industry is best handled. The committee heard a discussion regarding the authority of the Construction Industries Division of the Regulation and Licensing Department over local building inspectors. It also looked at

the development of genetically modified seeds and whether laws are necessary to protect local farmers from them, particularly with respect to genetically modified chile seeds.

Energy and infrastructure were prevalent topics during this interim's presentations, which included discussions of Qwest, SunZia, rural electric cooperatives and water usage in the *colonias*. The committee also heard presentations regarding public notice, a new model guaranty law and credit reports.

## GOVERNMENT RESTRUCTURING TASK FORCE

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The Government Restructuring Task Force follows in the footsteps of several prior efforts to organize New Mexico state government to improve its efficiency and enhance its services to New Mexico residents. Other initiatives include the New Mexico State Reorganization Committee appointed by Governor Edwin Mechem in 1951-1952, also known as the Little Hoover Committee; the 1967 effort under Governor Dave Cargo; the major 1977-1978 executive reorganization under Governor Jerry Apodaca; and the Committee on Government Efficiency appointed by Governor Bill Richardson, also known as the Carruthers

Committee. The task force, under the leadership of Senator Tim Eichenberg, chairman, understood its mandate to be:

*The task force quickly found that every interest in government is entrenched and every interest believes it is vital.*

(1) first, to find ways to increase efficiency and improve the way services are delivered to the people of New Mexico by reducing or eliminating overlap and duplication; and

(2) second, to find ways to reduce the cost of government, given the current and projected revenue estimates for the next three to five years.

The bedrock value maintained by the task force through its deliberations during this interim was to ensure that the fundamental responsibilities of state government are retained. The lenses through which the task force viewed its mandate were: efficiency, effectiveness, accountability and transparency.

Inherent in the task force's work and in its recommendations was the understanding that organizing and reorganizing government structures and services is an ongoing process. Problems and

issues rise to prominence and certain structures are needed to provide necessary services; however, as problems and issues recede from importance, former structures may no longer be necessary or may need to be redesigned. State government's ultimate purpose is to protect the short- and long-term interests of the public in the most efficient and effective manner possible, and its organizing principles must evolve, but the underlying requirements to ensure a responsive government that is efficient, effective, accountable and transparent are immutable.

The task force quickly found that every interest in government is entrenched and every interest believes it is vital. The members were repeatedly frustrated as presenters were either unable or unwilling to offer practical suggestions for changes that would lead to efficiency, effectiveness, accountability and transparency. State officials and employees were provided multiple opportunities, through testimony, comment and survey, to propose the best ways to streamline government or to provide big ideas on how to reform government and its relationship to taxpayers and citizens; however, the task force received very few recommendations from government, institutions of higher education or public schools. The task force encouraged the incoming administration to make a continued study of government one of its top priorities, and the members stand ready to assist in that very important undertaking. Perhaps with new gubernatorial leadership, the chokehold these vested interests have on the government's organization will be severed, or at least loosened.

### ***Fiscal Outlook***

It is important to put the task force's efforts into context. The task force was created in the midst of the worst economic downturn since the Great Depression. The state's recurring revenues are very sensitive to the performance of the U.S. and New Mexico economies in general and the petroleum sector in particular. During the boom years of 2005-2008, the state ran large recurring revenue surpluses and expanded government services and organizations. However, in just two years, from fiscal year 2008 to fiscal year 2010, the previous four years of revenue gains were wiped out, with a \$1.2 billion, or 20%, decline in revenue. The continued slow growth for the New Mexico economy translates into slow revenue growth. Total recurring general fund revenue is not projected to hit fiscal year 2008 levels until fiscal year 2015.

This precipitous decline in revenue and an increase in demand for government services due to the economic downturn contributed to large recurring revenue shortfalls, with the gap in the budget filled from general fund balances and other state funds as well as federal stimulus funds to supplant what would have been needed from the state general fund. The legislature and the governor worked

together over the last two years to respond to the crisis of declining revenue by trimming expenditures and expenses by approximately \$800 million since fall 2008, including the loss of 2,400 full-time-equivalents (FTEs), which is about 9% of the state work force, mostly through attrition, vacancies and the hiring freeze. The federal American Recovery and Reinvestment Act of 2009, or ARRA, funds provided needed supplantation of the general fund for about \$400 million of the budget reduction. The legislature recognized that even those cuts would not be enough. The June 2010 consensus revenue estimate indicated the state would be approximately \$350 million short for fiscal year 2012, which will begin on July 1, 2011 and for which the legislature will be appropriating in January. Through the summer and fall, the sense of the fiscal experts was that the shortfall could rise to as much as \$450 million. December brought a small glimmer of hope in the increase in revenue, but LFC leaders were saying the shortfall would still be approximately \$400 million, which means continued efforts, into the draconian range, must be taken to ensure that the constitutional requirement for a balanced budget is met. Against this backdrop, the task force worked through the summer and fall to craft organizational recommendations and begin work on deeper, more far-ranging changes.

### ***Work and Process***

The work plan proposed by the task force recognized the fiscal condition of the state as an opportunity for the state to examine the structure and operation of state government, rethink priorities and ensure that programs are operated and services are provided in the most effective and efficient manner possible. The main questions to be asked during the interim were:

- ★ What are the essential services the state must deliver?
- ★ What is the most effective way to accomplish the state's goals with the funds available?

House Bill 237 (Laws 2010, Chapter 101) (HB 237) created the Government Restructuring Task Force and required that its first meeting be held no later than April 22. The task force held a meeting on April 21 and selected Senator Tim Eichenberg as chairman and Representative Patricia A. Lundstrom as vice chairwoman. At that meeting, the task force received presentations on the requirements of HB 237; a historical perspective of New Mexico government structure, funding and previous restructuring initiatives; and a summary of other states' recent efforts to restructure their respective state governments.

The law directed the task force to study the current resources of the state's agencies, programs, services, funding and policies and the public needs served by them, including the:

- (1) recommendations of the governor's Committee on Government Efficiency;

- (2) need for consolidation of agencies and elimination or reduction of redundant, duplicative or overlapping programs or services;
- (3) current and projected staffing needs of state agencies for full-time, part-time, term, temporary and contract employees; and
- (4) current and projected revenue estimates for the next three to five fiscal years.

Additionally, the task force was charged with soliciting public input, studying the restructuring of state government that occurred from 1975 to 1978, examining all laws governing state government and recommending legislation or changes. All state agencies were required to provide information to the task force as needed. At its first meeting, the task force members generally agreed that nothing would be off the table; that is, all three branches of government and their respective agencies and programs as well as public schools and higher education would be subject to review and possible restructuring.

The January 14, 2010 Carruthers Committee report served as the conceptual blueprint for the task force deliberations. The task force made a concerted effort to seek input across state government, higher education and public schools and from the public. Several requests were made of all executive and judicial agencies to identify programs that could be provided more efficiently or that were simply out of date and should be eliminated; organizational structures that hampered the cost-effective delivery of necessary services; and positions that could be combined or eliminated to streamline service delivery. The New Mexico Legislative Council directed all other interim committees to focus their interim work on ways to make the departments they oversaw or worked with more efficient, more effective and more accountable and their functions and decisions more transparent. Through 10 meetings, presentations were heard on broad topics of governmental concerns. The task force was always interested in what the public had to say about its work and it asked for public input in a variety of ways:

- (1) it had public comment periods built into its agendas at every meeting;
- (2) it posted an online comment page on the legislative web site, which asked, principally, two questions:
  - (a) What are the essential services the state must deliver?; and
  - (b) What is the most effective way to accomplish the state's goals with the funds available?; and
- (3) it posted an online survey for state employees and for public members. It had hoped to ensure broader distribution of the state employee survey through the Department of

Information Technology to every state employee email, but the governor's office declined to assist.

As a proponent of transparency, the task force was the first interim committee to begin audiocasting its meetings. In addition, information received or created by the task force was available on the legislative web site at [www.nmlegis.gov](http://www.nmlegis.gov).

### *Core, Essential Services*

The task force grappled with the question of the core, essential services that must be provided by state government. As easily imaginable for a diverse group, there was not always agreement on what government's role should be in the lives of New Mexico citizens or how that role should be conducted. Most members agreed that one core function is to protect vulnerable populations such as the elderly, the young and the poor, but how and to what extent was open to much debate. Through the Legislative Health and Human Services Committee, the task force considered ways to control spiraling Medicaid costs and implement efficiencies through a consolidated insurance purchasing with the Risk Management Division of the General Services Department, Public School Insurance Authority and Retiree Health Care Authority and the Albuquerque Public School District health coverage entity while holding down costs and improving services.

Members agreed on the need to have an educated work force and citizenry, but the further question of how that should be accomplished was not so easily agreed upon. In the end, the task force deferred to the Legislative Education Study Committee (LESC) as the experts to make recommendations to streamline public school funding and governance, and it depended on the Higher Education Department's master plan, completed in the winter of 2010, to lead the way in reforming higher education funding. The task force also expected the department to stop not only the proliferation of campuses and off-campus instruction, but to require a significant contraction of bricks-and-mortar campuses.

All members agreed on the need for public safety and security, and concurred with the high potential for cost savings as well as efficiencies by having a centralized Department of Public Safety (DPS) that includes homeland security, emergency management, the New Mexico State Police, motor transportation and the state fire marshal. All of these functions would likely be called into play during a catastrophe such as a hazardous spill on the interstate or an explosion at the new uranium facility; even a weather-related chain-reaction accident on I-40 during a winter blizzard would require the orchestrated coordination of all divisions of the new DPS.

Members were again in unanimity over the need to strengthen financial controls and fiscal

oversight of state agencies. The task force expressed grave concerns over the scandals that have rocked the state in the last several years in regional housing authorities, school districts and state government. Its recommendations included strengthening the Department of Finance and Administration's oversight role in state purchasing, personnel and the public and higher education budgets. It recognized the important role of the state auditor and hoped that office will continue its aggressive move to ensure that all agencies and entities funded by taxpayer money have current audits and are held responsible for adequately and ethically accounting for those funds.

### ***Short- and Long-Term Goals***

At the beginning of the interim, Chairman Eichenberg and Vice Chairwoman Lundstrom challenged the members to develop a small number of "big ideas" that would frame the task force's work and recommendations. This exercise was done in recognition of the complexity of state government and the range of interests served by state government. Three major themes emerged:

- ▶ executive agency consolidation and reorganization;
- ▶ refinements to the public and higher education systems; and
- ▶ new structures for the delivery of publicly funded health care and risk management for state and local government employees, school personnel and public retirees.

Under these broad themes, the task force made specific recommendations that resulted in 26 bills, joint resolutions and memorials for introduction during the 2011 legislative session. The task force realized that its work was part of a process to redefine the essential services of state government and to structure government to deliver those services effectively. Its recommendation for short- and long-term goals are summarized in its final report. While several of the short-term goals may take time to accomplish, more in the range of five years, they were included as short-term goals because work on them should begin as soon as possible.

### ***Executive Reorganization***

Executive reorganization was the primary task this interim. The proliferation of departments and agencies is of serious concern when considered by the principles of efficiency, effectiveness, accountability and transparency. The last reorganization, in 1977-1978, recommended 12 cabinet departments, including the New Mexico Department of Agriculture\*; four non-cabinet departments, being regulation and licensing, military affairs, public defender and game and fish; and a handful of adjunct agencies. The state has now grown to almost double the number of cabinet departments, with

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\*The New Mexico Department of Agriculture is a member of the cabinet but is not an executive department; it is a constitutional department under the control of the board of regents of New Mexico State University.



23 cabinet departments, the same four non-cabinet departments and about 40 adjunct and administratively attached agencies, not counting the departments and functions under the control of other elected officials. Seven cabinet departments were created in the last eight years. The number of boards and commissions has also mushroomed in the three decades since the last reorganization. This plethora of government structures blurs the lines of authority, wastes taxpayer dollars and contravenes accountability. Facing this organizational creep, the task force grappled with the same problems as its predecessors in trying to trim the growth of government.

*The last reorganization, in 1977-1978, recommended 12 cabinet departments. The state has now grown to almost double that number, with 23 cabinet departments.*

The task force found that the magnitude and complexity of reorganization/restructuring efforts are nearly overwhelming, even for legislators and staff who are familiar with state government. A government organizational chart posted on the legislative web site illustrates the enormity of the issue by showing the sheer number of boxes indicating the 23 cabinet departments, with myriad advisory committees and councils attached on the left side of each department, with institutions on the right; administratively attached agencies below the departments and the adjunct agencies below that.

The task force recognized that reorganization will not save a large amount of money, at least not in the short term, but with a new administration starting, it is the best opportunity to begin streamlining government. Between the logical consolidations of departments and the elimination of the profusion of boards and commissions, the new governor will be able to preside over a more cohesive executive branch. The administration, and the public, will more easily know who is responsible for what. Some changes, such as the elimination of the Public Education Commission and the Public Regulation Commission (PRC), with their functions to be assigned by law, require constitutional amendments and cannot take place until after the 2012 general election, but others can be passed by the legislature, signed by the governor and implemented immediately. The task force acknowledged that its reorganization recommendations are just a start, and it encouraged the governor and the legislature to continue what it has begun because even more streamlining is not only possible, but necessary, in an era of declining resources and advancing technology.

#### ***Department and Other Agency Recommendations***

The task force recommended the following major departmental changes. Detailed descriptions of each recommendation, including net effect and potential cost savings, are included in the task force's

final report posted on the legislative web site.

- ★ Create a commerce department consisting of the former Economic Development Department, Tourism Department and Workforce Solutions Department and the Border Authority

- ★ Create a singular public safety department that includes the Homeland Security and Emergency Management Department and the Fire Marshal Division of the PRC

- ★ Expand the Department of Finance and Administration

- ★ Make the General Services Department a non-cabinet department

- ★ Create a health administration and finance department

- ★ Eliminate the State Game Commission and move the Department of Game and Fish into the Energy, Minerals and Natural Resources Department as a division

- ★ Realign the relationship of the Department of Environment to the Environmental Improvement Board and the Water Quality Control Commission

- ★ Combine the Gaming Control Board and the State Racing Commission

- ★ Combine all agency hearing officers into a single state agency

- ★ Amend the Executive Reorganization Act to require that all executive departments provide administrative and clerical services to administratively attached agencies

- ★ Make per diem and mileage rates and rules consistent across all levels of government

- ★ Sunset administratively attached and adjunct agencies and boards, commissions, councils, task forces, committees and other membership entities of the executive branch

- ★ Amend the Public School Finance Act to allow school districts to retain cash balances

- ★ Replace the Organic Commodity Act with the Organic Production Act and eliminate the Organic Commodity Commission

- ★ Propose three constitutional amendments: one to eliminate the Public Education Commission and to take out the specifics of the responsibilities of the secretary of public education; a second to eliminate the PRC; and a third to allow the legislature to overturn agency rules on a two-thirds' majority vote

- ★ Enact the Legislative Lottery Tuition Act, which requires repayment of a lottery scholarship if the recipient does not maintain qualifications or does not graduate within six years

The task force also recommended several bills to improve government services and the public's perception of state government as a patronage tool as follows.

- ★ Eliminate the state personnel board's authority to exempt positions from the classified service

- ★ Require that actual salaries be reported in the governor's exempt salaries plan
- ★ Request through a joint memorial that the State Personnel Office, in conjunction with LFC, review exempt and classified administrative and managerial positions and the salaries provided to each classification

The task force recommended that its life be extended by at least one more year to continue its work.

The task force also considered significant changes to boards and commissions, which are outlined in detail in its final report posted on the legislative web site. Potential savings from these changes are under \$1 million, but the bill eliminates obsolete or defunct boards, eliminates redundancy, streamlines government, places responsibility and accountability on state agencies under the control of the governor and, basically, clears the organizational decks so the governor and the legislature can see what is actually needed to ensure the delivery of essential state services to New Mexico residents

### ***Fiscal Impact***

As expected, the overall legislative package on executive reorganization does not save a lot of money at approximately \$5 million for fiscal year 2012. As reorganization settles and efficiencies are realized, however, the task force believed additional savings would accrue. In addition, if the governor and the legislature take the task force's recommendations for further study, particularly the review of the tax code and state functions, savings would certainly increase. The task force was concerned about efficiencies in the public school system and believed that savings and efficiencies could be realized through a reduction in the number of school districts or at least in the regionalization of administrative functions; the task force hoped its study of the issues would be expanded upon in the near future.

As noted, the task force deferred to LESC for fiscal recommendations. LESC considered options that totaled approximately \$89 million in savings in public school funding, but it was not expected to recommend all of the options reviewed, particularly those that would shorten instructional days or change the funding formula without appropriate study. The legislature might expect recommendations in the \$23 million to \$25 million range. LFC and the Higher Education Department, in consultation with the department's funding formula task force, would also come with recommendations for reductions in higher education. The Council of University Presidents testified to the task force that it concurred with the Funding Formula Study Task Force's recommendation to transition to an averaging model for fiscal year 2012, which reduces the workload reimbursement from

\$61 million to \$34 million, a reduction of \$27 million. A 3% across-the-board cut would save an additional \$23.6 million, or, if using the fiscal year 2012 Higher Education Department funding request, about \$22.9 million. Each 1% increase in the tuition revenue credit generates approximately \$2.7 million that offsets general fund effort, but the institutions are wary of such increases because of their impact on the I&G appropriations and a potential shift of resources from core I&G functions to other line items. Tuition increases also affect the Lottery Tuition Fund and hasten the day of reckoning on full scholarships for New Mexico high school graduates. The Council of University Presidents, New Mexico Independent Community Colleges and the New Mexico Association of Community Colleges support a complete reexamination of the higher education funding formula.

### ***Further Study***

The task force's final report outlined in detail several areas of continued study regarding reorganization, including state planning; judicial and legislative improvements; contracts and procurement reform; and a review of state functions. The most important step for the governor and the next several legislatures would be to watch closely those organizational changes proposed by the task force and accepted by the legislature and governor to ensure that they are implemented in such a way as to be efficient, effective, accountable and transparent. All members of the task force stand ready to assist that endeavor in any way possible.

## **HEALTH CARE REFORM WORKING GROUP**

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The Health Care Reform Working Group began its work in April 2010 with an overview of the Patient Protection and Affordable Care Act (PPACA) and development of a work plan. The group met monthly through October at the State Capitol in Santa Fe.

The working group's efforts focused on understanding the substantive provisions of the PPACA and gathering public input and recommendations relative to its implementation in New Mexico. To facilitate the public input process, the working group called for the self-formation of advisory groups to brief the working group on key provisions of the PPACA; develop time lines for implementation and funding opportunities; and provide recommendations to the working group for consideration. The topics considered by the working group included:

- (1) insurance reforms;

- (2) the temporary federal high risk pool program;
- (3) business impacts and tax provisions;
- (4) Medicaid;
- (5) long-term care;
- (6) work force and delivery systems;
- (7) consumer protection and consumer education;
- (8) women's health;
- (9) Native American provisions;
- (10) quality initiatives;
- (11) information technology; and
- (12) the health insurance exchange.

In general, the working group opted for including all recommendations put forth by advisory groups as worthy of due consideration, without specifically endorsing any particular recommendation or advisory group position. However, the working group did make the following general recommendations, many of which have already been implemented.

- Efforts between the working group, the Legislative Health and Human Services Committee and the executive leadership team should be coordinated, to the extent possible, to minimize duplication of effort.
- A comparison of the insurance provisions in the PPACA and the New Mexico Insurance Code needs to be completed and legislation drafted with all necessary changes made to address conflicts and fully comply with the PPACA.
- An executive agency or office should be designated as having the responsibility for tracking grant funding opportunities and coordinating responses.
- New Mexico should take full advantage of funding opportunities to maximize federal funding related to planning and implementation of all provisions of the PPACA, including but not limited to:
  - (1) the temporary federal high risk pool program;
  - (2) early retiree funding;
  - (3) rate review planning;
  - (4) health insurance exchange planning;
  - (5) the ombudsman program;

- (6) work force development;
- (7) delivery system models of care;
- (8) quality initiatives;
- (9) information technology; and
- (10) wellness and prevention initiatives.

- The working group should be formalized and continue its work during interim periods until the PPACA is fully implemented.

*The working group recommended that the state operate its own health insurance exchange, operated by a legislatively created, quasi-governmental nonprofit entity.*

The working group had extensive dialogue pertaining specifically to a health insurance exchange and, after weighing the pros and cons of numerous options, made the following recommendations.

- New Mexico should operate its own exchange.
- New Mexico should operate a single exchange to administer individual and small group markets, recognizing the need to address the unique needs both of individuals and small groups.
- New Mexico should operate a single statewide exchange, recognizing the need to address the unique needs of different geographic areas of the state.
- New Mexico should proceed with developing a New Mexico-only exchange but leave open the possibility of interstate partnering, in whole or in part.
- New Mexico's exchange should be operated by a legislatively created, quasi-governmental nonprofit entity.
- New Mexico's exchange should be robust, with a scope of responsibility that exceeds the elements required by the PPACA.

The working group further recommended that the legislature move forward expeditiously to enact legislation that creates or designates an entity with the responsibility and authority to plan, develop, implement and administer the exchange in order to meet the readiness and implementation time lines required under the PPACA.

## INDIAN AFFAIRS COMMITTEE

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Since the inception of the Indian Affairs Committee in 1989 by post-session action of the New Mexico Legislative Council, the committee has addressed issues that disproportionately affect Native Americans residing in New Mexico. The committee strives to facilitate government-to-government cooperation with all 24 Indian nations, tribes and pueblos in the state. In view of its work, the committee conducts its meetings in locations accessible to Native Americans and their leaders. The meetings of the committee are an essential way of relating the work of the legislature to the Native American segment of its constituency.

In fulfillment of its mission, the committee held six meetings during the 2010 interim, which were conducted at five pueblos, one Navajo Nation chapter and the Mescalero Apache Tribe. This year, the committee altered its normal travel schedule to remain close to the State Capitol in order to reduce travel costs for members, legislative staff and executive agency staff. Despite the limited travel, the committee continued to focus on addressing the issues of greatest concern for Native Americans residing in New Mexico.

At its first meeting, the committee heard from Raúl E. Burciaga, director, Legislative Council Service; Alvin Warren, secretary, Indian Affairs Department; Marilyn Hill, deputy secretary, Taxation and Revenue Department; John Garcia, secretary, Veterans' Services Department; and Ray Espinoza, director, Office of Indian Elder Affairs of the Aging and Long-Term Services Department. During this meeting, members focused on government restructuring, the priorities and concerns of the Indian Affairs Department, the Native American Veterans' Income Tax Settlement Fund and the federal matching assistance percentage, or FMAP, for Medicaid. The committee determined the major issues affecting Native Americans for the 2010 interim in its work plan and meeting schedule.

During the second meeting, the committee facilitated federal, state and tribal cooperation on various issues. Most notable among the issues was national health care reform, especially the federal Indian Health Care Improvement Act and Medicaid services. The committee heard from Kathryn "Katie" Falls, secretary, Human Services Department; Dr. Alfredo Vigil, secretary, Department of Health; and Leonard Thomas, area chief medical officer, Indian Health Service. The committee was particularly concerned with potential cuts to Medicaid services. The committee also heard from John D'Antonio, state engineer, and Estevan Lopez, deputy state engineer and director of the Interstate Stream Commission, regarding the *Aamodt* and Taos-Abeyta water settlements and the required

enactment by the federal government. Joyce Begaye-Foss, chair, Indian Arts and Crafts Board, U.S. Department of the Interior, and director of education at the state Museum of Indian Arts and Culture, informed the committee of the board's collaboration with the New Mexico Office of the Attorney General to enforce the provisions of the federal Indian Arts and Crafts Act of 1990. Vicki McIntire, deputy director, and Amadeo Shiye, tribal partnership coordinator, both of the Denver Regional Census Center, and Gina Valdez, New Mexico regional manager, all of the United States Census Bureau, provided a status update on the enumeration of Native Americans in Indian Country. Finally, John C. Meyer, director, Superfund Division, Region 6, U.S. Environmental Protection Agency, presented before a joint meeting of the Radioactive and Hazardous Materials Committee and the Indian Affairs Committee on the progress and activities underway with respect to the multi-agency five-year plan to address the uranium legacy in New Mexico.

At its third meeting, the committee focused on the government-to-government relationship between the state and Indian nations, tribes and pueblos. Secretary of State Mary Herrera addressed concerns about the implementation of a 2009 law to allow Indian nations, tribes and pueblos to submit a request for early voting alternative locations. Rachel O'Connor, Governor Richardson's DWI czar, and Michael Sandoval, director, Motor Vehicle Division, Taxation and Revenue Department, discussed a strategic plan to develop initiatives to stem DWI-related fatalities among Native Americans. John Standefer, state fire marshal, Fire Marshal Division, PRC, reviewed the state's funding history of municipal and county fire departments and their cooperation with Indian nations, tribes and pueblos to provide fire protection services. Roy E. Stephenson, director, Utility Division, PRC, summarized the status of proposed rules pursuant to Senate Bill 468 (2009), which directs the commission to adopt rules regulating the propane industry to protect consumer rights. The committee voted without opposition to provide formal comments on those proposed rules consistent with the concerns expressed by committee members.

Additionally, the committee focused on the education of Native Americans. Dr. Sherry Allison, president of Southwestern Indian Polytechnic Institute, explained that the institute lost its accreditation and has been placed on candidate status. The committee plans on holding a meeting at the institute during the next interim. Dr. Susanna Murphy, secretary-designate of public education, provided the status of implementing the Indian Education Act. Kevin Shendo, chair, Indian Education Advisory Council, presented recommendations as follows: consider changes to the equalization formula so impact aid follows the student; increase the authority of the Indian Education



Advisory Council; direct a greater amount of funding to state agencies to improve Native American student achievement and graduation rates; and withhold approval of a school district's budget for noncompliance with the Indian Education Act. Finally, the committee heard from various superintendents from school districts with large Native American student populations.

The committee dedicated part of its fourth meeting to addressing issues of common concern with the Land Grant Committee. Both committees heard from Juan Sanchez, chair, Land Grant Council; Lawrence T. Morgan, speaker, Navajo Nation Council; Chandler Sanchez, governor, Pueblo of Acoma; Frank Cerno, Governor's Office, Pueblo of Laguna; Norman Coeeyate, governor, Pueblo of Zuni; and others regarding the application of the Cultural Properties Act and similar acts to land grant common lands and their potential treatment as state lands. After the joint meeting, the Indian Affairs Committee continued to meet and addressed the persisting issue of capital outlay funding for Navajo Nation chapters in New Mexico, early childhood education for Native Americans, government restructuring that affects Native Americans and Indian water rights settlements. The committee voted without objection to send a letter to the United States senators from New Mexico urging them to support the passage of the settlements and a letter to the Government Restructuring Task Force recommending that the Indian Affairs Department be retained at the cabinet level.

The fourth meeting also focused on the mental health of Native American youth. Herbert Long, co-commander, Navajo Department of Behavioral Health Services, Dr. Jack Callaghan, director, Public Health Division, Department of Health, and others gave an in-depth account of the federal, state and tribal response to the youth suicide crisis affecting Thoreau and surrounding areas.

*The committee sent a letter to the Centers for Medicare and Medicaid Services in support of a proposed Medicaid waiver for Native Americans.*

The topic of the mental health of Native American youth continued at the committee's fifth meeting, held in Mescalero. Dorlynn Simmons, chief executive officer, Mescalero Service Unit, Indian Health Service, said that after Mescalero experienced an initial cluster of suicides in 2009, she was dispatched for 90 days as the incident commander and provided analysis of the federal, state and tribal responses to the crisis in Mescalero and surrounding areas. Rear Admiral Richie Grinnell, acting director, Albuquerque Area Indian Health Service, gave the committee an overview of the Contract Health Services program and funding shortfalls. Committee staff were directed to draft a memorial requesting Congress to fund the Indian Health Service as an entitlement program. Secretary Warren

asked the committee for its formal support in the Indian Affairs Department's efforts to protect Medicaid benefits for Native Americans by asking the Centers for Medicare and Medicaid Services for a special waiver. The committee voted without opposition to send a letter in support of the proposed Medicaid waiver, with copies to New Mexico's congressional delegation.

The committee also addressed other topics of concern at that meeting. Laurie Chapman, capital outlay manager, Indian Affairs Department, presented the committee with the Tribal Infrastructure Fund Fiscal Year 2011 Report. Joe Graham, director, Indian Resource Development Program at New Mexico State University, stated the program's mission. David Eisenberg, deputy chief public defender, reported on the status of establishing a public defender office in Gallup. The committee voted without opposition to send a letter congratulating the Public Defender Department on its work and encouraging collaboration with the county to finalize the office. John Monforte, executive director, Gaming Control Board, presented the 2009 Compulsive Gambling Funds Report.

At its final meeting, the committee heard reports and considered legislation. Mr. D'Antonio presented the Office of the State Engineer's 2010 Indian Water Rights Settlement Fund Report and the implication of the enactment of the federal Indian water rights settlements. Dorothy Rodriguez, secretary-designate, Taxation and Revenue Department, discussed the department's efforts to administer the Native American Veterans' Income Tax Settlement Fund. Attorney General Gary King and Albert Lama, chief deputy, Office of the Attorney General, presented proposed legislation to implement a cigarette tax credit stamp for units sold in Indian Country. The committee endorsed the following legislation for introduction in the 2011 legislative session.

- Lottery Scholarships for Tribal Colleges
  - provides lottery scholarships for residents attending tribal colleges
- Control of Jemez State Monument to the Pueblo of Jemez
  - a memorial requesting the return of the Jemez State Monument Heritage Area to the Pueblo of Jemez
- Make the Indian Health Service an Entitlement
  - a memorial asking Congress to change the funding for the Indian Health Service to an entitlement program
- Navajo Nation Foster Care Plan
  - a memorial requesting state agencies to assist the Navajo Nation in developing a foster care and subsidized adoption program plan

## INVESTMENTS OVERSIGHT COMMITTEE

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The Investments Oversight Committee focused during this interim on the investment functions of the State Investment Council (SIC), the Public Employees Retirement Association (PERA) board and the Educational Retirement Board (ERB), as well as receiving the recommendations of the Retirement Systems Solvency Task Force, which was created by statute to evaluate the solvency of the ERB and PERA pension funds and make recommendations to the committee, which would in turn propose legislation to the 2011 session of the legislature.

The committee addressed a number of issues related to the funds invested by the SIC, the PERA and the ERB. The committee not only examined the investment performance of each fund but also considered fund governance, policymaking and procurement processes for investment managers and consultants.

At its July meeting, the committee took testimony from the SIC, ERB and PERA on recent reforms in board governance, investment policy and investment operations management enacted in response to new legislation; and the Ennis Knupp fiduciary reviews of the agencies commissioned by the New Mexico Legislative Council and the State Board of Finance.

At its August meeting, the committee received reports from the SIC, ERB and PERA on the amount of funds lost as a result of investment fraud or other illegal activities or amounts paid to third-party marketers and current and proposed litigation efforts to recover such funds. The committee also heard a panel discussion involving the three investment agencies on the potential for increased investment earnings or cost savings from combining, refining or restructuring the agencies' investment functions. The New Mexico attorney general also gave testimony at the August meeting on statewide options, strategies and efforts to recover funds lost due to investment fraud or other illegal activities.

At its December 1, 2010 meeting, the committee heard reports from the PERA and ERB on their respective recent investment performance, outlook for pension fund solvency and policy initiatives and legislative proposals dealing with investments or fund solvency. The SIC reported on its recent investment performance and proposed legislation affecting investment fund governance, investment policy and agency operations. The committee also heard recommendations from the Retirement Systems Solvency Task Force regarding proposed legislation and heard a panel discussion on a recommendation by the Attorney General's Office to include investment advisory services under the Procurement Code. The committee voted at that meeting to endorse the following legislative

proposals.

- A bill to provide that the state's contribution rates into the Educational Retirement Fund would be increased gradually beginning July 1, 2011. The increased contribution rates would start at 11.4% in fiscal year (FY) 2012 and incrementally increase yearly, resulting in a rate of 13.9% beginning in FY 2017 and continuing thereafter.
- A bill to remove the governor as a member of the SIC and require the chair of the SIC to be elected by the members.
- A bill to allow the state investment officer and the state treasurer to appoint designees; reduce the governor's appointments, with the consent of the senate, from six to three; and add three members appointed by the New Mexico Legislative Council.
- A bill to expand the duties of the Private Equities Investment Advisory Committee to include reviewing and making recommendations to the council on economically targeted investments.
- A bill to amend the New Mexico Uniform Securities Act to allow for enforcement by the attorney general and to increase the statute of limitations. The bill would also amend the definition of "fraud" to mirror New York's "Martin Act".
- A bill to allow the SIC to enter into contingent fee legal services contracts in pursuit of investment recoveries rather than on a fee-for-service basis, as is now the case.
- A bill to remove the statutory requirement that the state investment officer serve on the New Mexico Finance Authority, the New Mexico Renewable Energy Transmission Authority and the education trust boards.
- A bill to remove the current statutory language that requires the Tobacco Settlement Permanent Fund to be invested "as the Land Grant Permanent Funds" because it is not appropriate for the tobacco fund to be invested in long-term horizon investments like private equity, real estate and other alternatives, especially because the tobacco fund is a reserve fund for the legislature.
- A bill to amend legislation dealing with the Tobacco Settlement Permanent Fund to remove the requirement that it be invested in the same manner as the land grant permanent funds.
- A resolution proposing a constitutional amendment to increase from 15% to 25% the cap on international equity investments by the SIC for the land grant permanent funds.

An additional meeting of the committee was approved by the New Mexico Legislative Council

for December 21, 2010. At this meeting, the committee heard the final legislative proposals of the ERB and PERA to enhance the solvency of their pension funds and a legislative proposal by the SIC to improve the investment process and agency operations. The committee also heard legislative proposals from committee members and other legislators to enhance ERB and PERA pension fund solvency.

The committee voted at this meeting to endorse the following legislative proposals.

- A proposal to increase ERB employee contribution rates from the current rate by .125% per year for four years to 8.4% of salary for those employees making \$20,000 or less per year and to 9.9% of salary for those making greater than \$20,000 per year and increase the employer contribution rates an average of .5% per year for six years to 15.4% of salary for those employees making \$20,000 or less per year and 13.9% of salary for those employees making greater than \$20,000 per year. (No bill draft)
- A bill to enhance solvency of the PERA pension fund by increasing various contribution rates to the pension fund. Proposed contribution increases are detailed in the committee's final report posted on the legislative web site at [www.nmlegis.gov](http://www.nmlegis.gov).
- A bill to amend the Judicial Retirement Act to increase the employee contribution rates. Proposed contribution increases are detailed in the committee's final report.
- A bill to authorize the Public Employees Retirement Board to select a custodian bank, rather than have the selection performed by the State Board of Finance as is now the case, and to hire attorneys on a contingent fee basis rather than on a fee-for-service basis, as is now the requirement.
- A bill to amend the powers and duties of the SIC; provide for the election of the chair and vice chair of the council; authorize the SIC to contract for legal services on a contingent fee basis; and make other technical amendments to SIC statutes.
- A bill to amend the Public Employees Retirement Act to reduce cost-of-living adjustments applied annually to retiree pension payments.
- A bill to amend the Public Employees Retirement Act to require municipal employees to make the employee portion of the contribution to their retirement plan.

## LAND GRANT COMMITTEE

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The Land Grant Committee held four meetings, along with one joint session with the Indian Affairs Committee, during the 2010 interim. Meetings were held in Santa Fe, San Miguel del Vado and Gallup.

The Land Grant Council, the state agency that acts as the official liaison between community land grants-mercedes and other local, state and federal government agencies, began its work this year. The five members appointed to the council are: Macario Griego, Lee Maestas, Leonard T. Martinez, Rita Padilla-Gutierrez and Juan Sanchez. The council was created as part of the Land Grant Support Act, which the committee endorsed for the 2009 legislative session. Two pieces of legislation endorsed by the committee for the 2010 legislative session were also enacted into law: Senate Bill 41 (Laws 2010, Chapter 6; compiled as Section 61-23-33 NMSA 1978), which requires notice of any boundary surveys conducted in or bordering on any of the four land grants governed by Chapter 49, Article 6, 7, 8 or 10 NMSA 1978; and Senate Bill 94 (Laws 2010, Chapter 22; compiled as Section 41-4-30 NMSA 1978), which gives land grants that are political subdivisions of the state the right to purchase tort liability coverage through the Risk Management Division of the General Services Department.

Topics addressed this interim included the return of certain cemeteries and return of unused parcels of state land to the San Miguel del Vado Land Grant-Merced; negotiations on federal legislation affecting the San Antonio de las Huertas Land Grant-Merced; continued funding for the Land Grant Studies program; promotion of use rights on former common lands that are now owned by state or federal agencies; status of the Cabresto Dam construction project; and investment of land grant funds with the state treasurer. The committee also held a joint meeting with the legislative interim Indian Affairs Committee to discuss a proposal from the Land Grant Council that would prohibit the common lands of a land grant-merced that is a political subdivision of the state from being designated or treated as state land. The committee endorsed an amended version of that proposal at its October meeting.

The committee also endorsed bills for the 2011 session that: 1) authorize the Land Grant Council to expend private and federal funds to assist community land grants-mercedes that are not political subdivisions of the state; 2) allow the Town of Tecolote Land Grant-Merced to be governed under the provisions of Chapter 49, Article 1 NMSA 1978 as a political subdivision of the state; 3) authorize land grant boards of trustees to be elected for staggered terms; and 4) move the official land

grant registry from the Office of the Secretary of State to the Land Grant Council office.

## LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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The Legislative Health and Human Services Committee (LHHS) completed its business for the interim on November 10, 2010. In addition to overseeing health and human services agencies, the committee was directed by the New Mexico Legislative Council to concern itself with reviewing three major areas:

- (1) the restructuring of the state's Medicaid program;
- (2) the provisions of the federal Patient Protection and Affordable Care Act (PPACA), which passed in March 2010; and
- (3) the restructuring of the health functions of state government.

Secretary of Human Services Katie Falls came before the committee to describe the difficult choices that the Human Services Department will have to make in the upcoming months due to the state's enormous budgetary shortfall and the decrease in federal matching dollars. Committee members raised concerns about maintaining the state's health and its health infrastructure; the continuing role of for-profit managed care in Medicaid; Medicaid fraud; and the difficulty of deciding what services could be cut when lives may be on the line.

*Committee members raised concerns about the difficulty of deciding what services could be cut when lives may be on the line.*

Regarding federal health care reform, the committee received updates nearly every month from the joint legislative-executive Health Care Reform Working Group. The committee also received monthly testimony from national and local experts on provisions of the PPACA such as:

- (1) health insurance exchanges, including models put forward by experts and advocates and other states' experiences;
- (2) health care work force supply, including:
  - (a) plans to collect data statewide on provider numbers;
  - (b) a report from a task force that seeks to support nursing education in the state; and

- (c) testimony from state agencies and educational institutions on its applications for PPACA and federal stimulus health care work force development grants;
- (3) health insurance rate review and the PPACA possibilities for increasing or decreasing rates in the state;
- (4) changes that will have to be made to the New Mexico Insurance Code, including mandates;
- (5) health care delivery and reimbursement reform, including promotion of the accountable care organization reimbursement model and the medical home integrated delivery model;
- (6) the impact of the PPACA's mandate that states offer Medicaid to all adults and children with incomes at or below 138% of the federal poverty level;
- (7) the impact of the individual mandate to obtain insurance coverage and the increases in the numbers of insured individuals in the state; and
- (8) what opportunities or challenges the PPACA may present in terms of New Mexico's governance of health care finance and administration.

After receiving the working group's recommendations on the exchange, the committee debated whether to create an exchange, allow the federal government to operate an exchange on the state's behalf or opt out of having an exchange in 2017. The committee endorsed a bill outlining a health insurance exchange to be created pursuant to the PPACA's mandate and the recommendations of the working group. According to the bill draft the committee endorsed, the exchange would operate as a nonprofit entity and would provide for a single, robust exchange for individual and small-group markets.

In light of the Government Restructuring Task Force's deliberations on changes to governance of health and human services in New Mexico, the committee considered the possibility of consolidating the Interagency Benefits Advisory Committee agencies, which include the Risk Management Division of the General Services Department; the Public School Insurance Authority; the Retiree Health Care Authority; and the Albuquerque Public School District's insurance program. The committee reviewed prior testimony on this subject and considered the impact of administrative and risk integration among these agencies.

The committee considered the possible effect of transferring Medicaid home- and community-based waiver program operations from the Aging and Long-Term Services Department and the Department of Health to the Human Services Department, as the Government Restructuring Task



Force had proposed. The committee also considered the possible effect of transferring those aspects of the home- and community-based waiver operations and financing with which the Human Services Department is currently charged to the Aging and Long-Term Services Department and the Department of Health, though it made no recommendations on this matter.

The committee considered the possibilities afforded by consolidating all medical assistance programs, including waivers, public employee and retiree health benefits, New Mexico Health Policy Commission functions, behavioral health purchasing, an all-payer claims database and work force data collection functions, into one larger agency to be known as the Health Policy and Finance Department. While committee staff produced a bill containing these provisions, the committee did not endorse the legislation but, rather, sent it to the Government Restructuring Task Force for consideration.

For the upcoming 2011 regular session, the committee endorsed eight bills and one memorial, which are described in its final report posted on the legislative web site at [www.nmlegis.gov](http://www.nmlegis.gov).

## **MILITARY AND VETERANS' AFFAIRS COMMITTEE**

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The Military and Veterans' Affairs Committee was originally created by statute for the 2009 interim and then permanently reauthorized during the Forty-Ninth Legislature, Second Session, 2010. Pursuant to Section 2-20-2 NMSA 1978, the committee holds hearings relating to military and veterans' issues and creates an annual report, with recommendations for any necessary legislation, by December 15 prior to each session of the legislature. The committee is also tasked with making legislative recommendations to Congress and regulatory recommendations to the United States Department of Veterans Affairs and the United States Department of Defense.

In fulfillment of its statutory duties, the committee held four meetings during the 2010 interim. At its initial meeting, the committee developed a work plan that identified numerous military and veterans' issues of concern. During its organizational meeting, the committee reviewed past legislation and heard testimony from John M. Garcia, secretary of veterans' services; Kenny C. Montoya, adjutant general of the Department of Military Affairs; and General Hanson Scott, director of the Office of Military Base Planning and Support. Each agency presented its legislative priorities. The committee took into consideration the requests of these agencies as it scheduled testimony and presenters for the coming interim. Additionally, Raúl E. Burciaga, director, Legislative Council

Service, informed the committee that the New Mexico Legislative Council directed all interim committees to hold their meetings in Santa Fe, unless a meeting outside the capital city could be specifically justified. In addition to voting to submit the work plan for approval by the New Mexico Legislative Council, the committee voted to write a letter to the superintendents of school districts around the state requesting that they assist the "Call for Photos" effort by providing photographs of identified deceased Vietnam veterans. The committee also voted to write a letter to Dr. Viola E. Florez, secretary of higher education, to request that the Higher Education Department address the resolution expressed in House Joint Memorial 1, which proposed a study of uniform military credit at New Mexico colleges.

At its second meeting, the committee heard testimony regarding House Joint Memorial 1 and other educational issues facing active military personnel and veterans. Dr. Florez and Brendan Trujillo, director, State Approving Agency, Higher Education Department, discussed the need to standardize the evaluation and transfer of credits earned by military veterans in their pursuit of an undergraduate or graduate degree, including experience or training gained while enlisted. The department has created an "articulation committee", which is responsible for defining general education courses. The committee recognized the challenges the department faces in standardizing the evaluation and transfer of credits earned by military veterans, and it will continue to work with the department to resolve the issue. Dr. Sheila Hyde, deputy secretary, and Rod Ventura, deputy general counsel, both of the Public Education Department, summarized the current and expected actions necessary to implement the Interstate Compact on Educational Opportunity for Military Children, of which New Mexico is a signatory. Molly Hayes, flight chief, Airmen and Family Services, summarized the role of Kirtland Air Force Base's School Liaison Office and benefits expected from the enactment and implementation of the compact.

Also at that meeting, the committee heard from George Marnell, director of the federal Veterans Administration health care system; Dr. Virginia Porterfield, co-director for behavioral health care and chief of psychiatry; and Loren Pierce, Veterans Service Center manager, Albuquerque Regional Office, Veterans Benefits Administration, U.S. Department of Veterans Affairs, regarding the existing services and barriers to treat veterans with posttraumatic stress disorder or traumatic brain injury. Committee members were pleased to hear that all veterans now can get help within 30 days, and if immediate help is needed, a veteran will be seen immediately. Harrison Kinney, executive manager, and Hoyt Roberson, clinical supervisor, both of Presbyterian Medical Services Behavioral Health

Services Division, provided a status update on the recently created "jail diversion program", whose mission is to provide behavioral health and substance abuse treatment alternatives for New Mexico veterans in contact with the legal and judicial systems. The committee has been working on this issue since 2009, when it was raised in Senate Memorial 74. Committee members were pleased that implementation was taking place, even if only as a pilot project.

The committee also addressed the leaked jet fuel from Kirtland Air Force Base into Albuquerque's ground water. James P. Bearzi, chief of the Hazardous Waste Bureau, Department of Environment, discussed the spread of the plume. Colonel Matthew Bartlett, commander, Mission Support Group, gave an overview of Kirtland Air Force Base operations and Kirtland's contribution to New Mexico and to the Albuquerque community. Colonel Bartlett assured the committee that the Department of Defense and Kirtland Air Force Base would take necessary action to contain and clean up the jet fuel.

The committee continued to address the concerns of veterans and military installations during its third meeting. Alan Martinez, deputy secretary of veterans' services, and Lloyd Calderon, director of the Veterans' Business Resource Center of the Department of Veterans' Services, described New Mexico as "nonfriendly" to veterans' efforts to establish businesses in New Mexico. The committee received various legislative recommendations to promote veteran-owned businesses. Additionally, Dale M. Vande Hey, south central region state liaison, Department of Defense, provided testimony on the two legislative priorities for the department: first, on a service member's ability to authorize a person of the member's choosing to direct disposition after death; and second, an enactment of model legislation to maintain the status quo in child custody while a service member is deployed. Dan Hicks, chief of staff, White Sands Missile Range, and Colonel David Sullivan, 49th Wing vice commander, discussed the concerns of their respective military installations. Of particular concern for the committee was the impact of placing SunZia transmission lines alongside or within testing areas of the missile range. The committee voted without objection to write a letter to the legislative leadership expressing the need to balance the growing alternative energy industry in New Mexico with the existing needs of the military facilities in New Mexico.

At its final meeting of the interim, the committee heard reports that were requested in various memorials, and it considered legislation. In addition to the recommendations made to federal agencies during the 2010 interim, the committee endorsed the following bills for the upcoming legislative session.

- Service Member Child Custody Act
- Kenneth Ellis III Act
- Removing of service members killed or missing in action from jury pool
- Giving school enrollment priority for children of deployed service members
- Designating a person to arrange disposition of remains of a service member
- Providing an additional 3% preference for veteran-owned businesses
- A memorial to study the use of Fort Bayard as a treatment center for posttraumatic stress disorder
- Providing a deduction from gross receipts of veteran-owned businesses
- Creating a veterans' enterprise fund
- Creating a veteran employment tax credit

## MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

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The Mortgage Finance Authority (MFA) Act Oversight Committee held six meetings during the 2010 interim. The June and July meetings, as well as the two September meetings, were held in Albuquerque at the MFA office. The August meeting was held in Las Cruces, and the November meeting was held in Albuquerque at the Hotel Albuquerque, which, at the time, was also hosting the Governor's Housing Summit.

At the first meeting, the committee was asked to help the work of the interim Government Restructuring Task Force by examining ways to improve the efficiency of, and possibly restructure, the MFA. The current budget crisis and efficiency measures were repeatedly raised as important issues throughout the interim. At the fifth meeting, MFA staff presented on this topic, including a discussion of the MFA's internal cost-saving measures, the MFA's current budget and a comparison of the MFA's internal organization to other states' housing authorities. The MFA also discussed the federal American Recovery and Reinvestment Act of 2009 (ARRA) funding, which was used to help fund the MFA's weatherization, homeless prevention and tax credit assistance programs. Committee members were pleased with the MFA's bonding capacity, financial status and use of federal ARRA funding, but they expressed the need for more comparison of programs to those of other states to ensure that the MFA is running as efficiently as possible.

The meeting in Las Cruces allowed the committee to tour housing projects in which the MFA is a partner or for which the MFA administers funding. The committee toured three different projects: the Alvarado project, a single-family rehabilitation project; Paseo del Oro, a single-family new construction project; and Stone Mountain, a multifamily new construction project. The Alvarado project was funded through an MFA forgivable loan, an MFA grant from the MFA's lead-based paint program and a grant from the United States Department of Agriculture's 2008 rural development program. The Paseo del Oro project is in a subdivision that was purchased with the aid of \$1.4 million from the New Mexico Housing Trust Fund, which is administered by the MFA. A local bank, the City of Las Cruces' federal block grant program and the HUD SHOP program also partnered with the MFA to make the development possible. The Stone Mountain project consists of multiple apartment buildings, some of which are rented at market rate while others receive low-income tax credits. The MFA partnered with the City of Las Cruces Housing Authority and several other partners to fund construction of the project. The tour allowed the committee to see the MFA projects and to learn about how the MFA partners with other governmental and private entities to fund such projects.

At several meetings, the committee addressed the MFA's conflict-of-interest procedures with MFA staff. Based on these discussions, at the November meeting, MFA staff presented several changes to the MFA's internal conflict-of-interest procedures. The committee was pleased with the suggested changes.

No MFA regulations were reviewed, but the committee endorsed two bills proposed by the MFA. The first bill would transfer oversight of the regional housing authorities from the MFA to the Department of Finance and Administration. The MFA proposed this bill because it is currently receiving no state funds to exercise its statutorily mandated duties related to oversight of the housing authorities. The second bill asks for an appropriation of \$250,000 to fund the MFA's oversight of the regional housing authorities.

## NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

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The committee met six times in the 2010 interim to carry out its statutory duties to monitor and oversee the New Mexico Finance Authority (NMFA), the Border Authority, the Spaceport Authority and the New Mexico Renewable Energy Transmission Authority (RETA). The committee

examined the missions, strategic plans, organizational structures, operations budgets, activities and projects of all four authorities.

In its analysis of the NMFA, the committee focused on whether the NMFA remains true to its original mission to assist the New Mexico communities that are most in need of financial assistance. The committee took testimony from NMFA management and board members regarding how the NMFA is allocating its resources and what efforts are made to provide financing to disadvantaged

*The Department of Transportation reported serious funding shortfalls in the GRIP program and in maintenance funding for state roads.*

entities in rural New Mexico. The committee reviewed reports on the Public Project Revolving Fund regarding where the loans are being made and on the costs of borrowing from the fund versus other sources of funding available to New Mexico communities. The committee also

reviewed the Economic Development Revolving Fund, Water Project Fund, Local Transportation Infrastructure Fund and Colonias Infrastructure Trust Fund.

The committee received reports on the NMFA's bond ratings and how the bond ratings might be affected by the NMFA's contingent liquidity account and the reserve account, and by a potential transfer of funds from the NMFA to the general fund.

Another major issue under consideration was the status of transportation funding. The committee heard about the status of Governor Richardson's Investment Partnership (GRIP) bond refinancing and GRIP projects. The committee also received a report on the work being undertaken pursuant to House Memorial 9 (2010). The Department of Transportation reported on the serious funding shortfalls in the GRIP program and in maintenance funding for state roads.

The Border Authority reported on trends affecting the border region and on the authority's efforts to expand economic development. The committee examined the missions of the various New Mexico border development organizations and commissions with an eye toward potential overlaps, but it did not recommend consolidation.

The Spaceport Authority updated the committee on spaceport construction, noting that the runway has been completed. The authority also reported on its efforts to attract new space-related business and industry to New Mexico. Virgin Galactic representatives also reported on economic development opportunities being brought to the southern part of the state by the spaceport.

The RETA briefed the committee on the result of its 2009 Senate Memorial 44 study, the

RETA project to map renewable energy corridors, the barriers to developing electric transmission line infrastructure, the RETA's opportunities to facilitate infrastructure and recommendations to expedite the construction of renewable energy transmission infrastructure. The RETA also reported success in its first bond issuance, which will allow the RETA to cover its operational costs through fiscal year 2012 without additional state general fund assistance.

The committee endorsed 12 pieces of legislation for introduction during the 2011 legislative session, as follows.

- A \$2 million appropriation from the Public Project Revolving Fund to the Drinking Water State Revolving Loan Fund
- A bill authorizing funding through the Public Project Revolving Fund for 130 projects
- A bill authorizing funding through the Economic Development Revolving Fund for 13 projects
- A bill authorizing funding through the Water Project Fund for 49 projects
- A bill to increase eligibility for water project financing to include intercommunity water or natural gas supply associations
- A bill to extend the daily capital outlay tax for two years to allow full payment of the bonds secured by the tax
- A bill to temporarily require Public Project Revolving Fund project reporting, while removing the requirement of prior legislative project authorization
- A bill authorizing the NMFA to seek certification as a community development financial institution
- A RETA statute cleanup bill
- A bill authorizing the issuance of special permits for overweight commercial vehicles with reducible loads that operate within six miles of the border
- A bill authorizing motor transportation officers to conduct field enforcement of commercial vehicles for compliance with the Motor Transportation Act and the Motor Carrier Act
- A bill expanding the definition of entities protected from liability under the Space Flight Informed Consent Act

## PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

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As the "direct descendent" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the Public School Facilities Authority; and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

Responding to the New Mexico Legislative Council's request that interim committees limit meeting time and travel during the 2010 interim because of revenue shortages, the task force held four one-day meetings in Santa Fe in addition to its May 19 organizational meeting. Full task force meetings were held on July 7, October 7, November 24 and December 21. The task force also held two meetings of a work group, on August 30 and October 7, pursuant to language in Laws 2010, Chapter 104 (p.v.), which states, in pertinent part, that the task force "shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects".

The task force began its seventh year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of the work of the 2009 interim, a review of the Public School Capital Outlay Council's 2009 annual report and a summary of the status of task force-endorsed legislation.

With passage of the final version of the public school capital outlay "omnibus bill" (Laws 2010, Chapter 104, p.v.) endorsed by the task force, several of the task force's policy recommendations were enacted by the 2010 legislature, including the following amendments to the Public School Capital Outlay Act:

- (1) a requirement that money distributed from the Public School Capital Outlay Fund to the state fire marshal and the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, general appropriations to those agencies;
- (2) language allowing the Public School Facilities Authority to administer procurement



for certain emergency projects;

(3) an extension of time for necessary roof repairs and replacements; and

(4) repeal of an appropriation enacted during the Forty-Ninth Legislature, Second Special Session, to pay certain insurance premiums for school districts.

In response to testimony heard during the 2009 interim, the task force endorsed legislation to amend the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority. The task force also endorsed a bill that did not receive a message from the governor that would have, among its provisions, amended the Charter Schools Act to require that on or after July 1, 2010, a new charter school cannot open and an existing charter school cannot relocate unless the Public School Facilities Authority finds that the facilities meet or exceed the average rating of schools on the New Mexico Condition Index.

The governor once again vetoed language in the "omnibus bill" that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and that authorized an increase in grant assistance for qualifying rural high schools. The governor also vetoed similar legislative language passed in the 2007, 2008 and 2009 legislatures allowing an increase in grant assistance for certain rural or "property-tax poor" high schools.

For the past four years, the task force has endorsed legislation, which did not pass, to eliminate or modify the statutory requirement for the bonding of subcontractors for public school projects. In response to continued concerns and a requirement in the "omnibus bill", the task force continued and expanded the work group to examine the costs and benefits of bonding subcontractors on public school projects. The working group included task force members as well as representatives from the General Services Department, the Public School Facilities Authority and various representative groups from the construction industry. The group met on August 30 and again on October 7 and was facilitated by a contract professional to bring forth recommendations to the task force.

Members who were present at the last meeting of the task force work group agreed upon the following recommendations.

- Legislation: increase the subcontractor bonding threshold from \$125,000 to \$250,000.
- Rule changes: make wording changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference.
- Process changes for the Public School Facilities Authority: 1) develop a standardized template for submission of requests for proposals for construction, with detailed instructions;

2) develop a web-based training module for contractors and subcontractors; and 3) develop a process for web-based training for evaluation committee members and require members to acknowledge completing it.

As has been the case in each interim since the establishment of the original task force in 2001, charter school facility issues were a topic of discussion at almost every meeting during the 2010 interim. The task force heard testimony that legislation passed in 2006 requires districts to share Public School Buildings Act (HB 33) funds with charter schools and that legislation passed in 2009 with the same requirement for the Public School Capital Improvements Act. Representatives from charter schools and from the Public Education Department told the task force that several districts had recently had

*Legislation passed in 2006 requires school districts to share HB 33 funds with charter schools, yet presenters told the task force that several districts recently held HB 33 elections that did not include charter schools in the proclamation.*

HB 33 elections that did not include charter schools in the proclamation. Public School Facilities Authority staff presented information regarding a potential "incubator process" for charter school startups. The task force co-chair requested staff to work on the issue during the 2011

interim and to bring a more fully developed plan to both the Public School Capital Outlay Council and the task force for consideration for legislation for the 2012 session. The task force also spent time at several meetings discussing issues related to approval of leases and lease-purchase agreements.

Other topics on which the task force heard testimony during the 2010 interim included the following:

(1) a presentation from representatives of the Albuquerque Public School District on the district's Capital Master Plan, which has been in place and operational for more than 20 years, as well as a presentation on the school district's current policy regarding charter school facilities;

(2) a demonstration of the new geographic information system, developed by the Public School Facilities Authority in collaboration with the University of New Mexico's Earth Data Analysis Center as the result of legislation endorsed by the task force for the 2009 session;

(3) an update from the Public School Facilities Authority on implementation of its facilities information management system and progress on implementation of equipment inventories and school district preventive maintenance plans; and

(4) Public School Facilities Authority audit reports on state sources of funding.

During the course of the interim, Public School Capital Outlay Council and Public School Facilities Authority staff determined that enough funding would be available from supplemental severance tax bonds to allow for the awarding of special short-cycle, standards-based planning grants to qualifying districts among the top 60 in the New Mexico Condition Index rankings. The task force heard a presentation from the council chair and the council's Awards Subcommittee chair on the funding for grant awards, criteria for making grant awards and potential grant award recipients.

During the remainder of the interim, the task force heard testimony about the ongoing implementation of the standards-based process, the adequacy of the current permanent revenue streams, the effect of the current economy on revenues to fund the current round of council grants and capital outlay funding resources and requirements for charter schools.

### ***Highlights of Recommendations and Proposed Legislation***

The task force's 2010 recommendations continued the work of the task force in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating Public School Capital Outlay Council funds. Task force endorsements for the 2011 legislature included bills to amend current statutes as follows.

- Amend the Procurement Code to increase the subcontractor bonding limit from \$125,000 to \$250,000
- Amend the Procurement Code to establish the applicability of the prevailing wage law for construction manager at risk procurement
- Amend the Public School Capital Improvements Act and the Public School Buildings Act to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts
- Amend the Public School Capital Outlay Act to require that, on or after July 1, 2011, a new charter school cannot open or an existing charter school cannot relocate unless the facilities of the new or relocated school have an New Mexico Condition Index rating equal to or better than average for all New Mexico public schools for that year and provides 18 months for charter schools to achieve this rating (the bill also exempts a school district leasing facilities to a charter school from State Board of Finance approval and requires Public School Facilities Authority approval before entering into a lease agreement or lease-purchase agreement for

school facilities or before applying for a grant for lease payment)

Task force members also considered proposed legislation to amend the Charter Schools Act to require the addition of a dispute resolution mechanism for state-chartered charter schools, as well as locally chartered charter schools. After considerable discussion, members agreed by consensus to ask task force staff to work with the LESC to address concerns with the bill and to prepare it for consideration for LESC endorsement.

## **RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

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The Radioactive and Hazardous Materials Committee met for one day in Los Alamos and two days in Carlsbad. Otherwise, all of its meetings were held in Santa Fe. The committee covered each topic in its scope of work, hearing testimony on:

- (1) government restructuring proposals and programs and the missions of the Department of Environment in the context of more efficiency and cost-effectiveness;
- (2) the nuclear fuel cycle relative to energy needs;
- (3) New Mexico's supply of and demand for electricity and the potential role in generation and transmission of electricity;
- (4) the status of the Waste Isolation Pilot Plant (WIPP);
- (5) "energy parks";
- (6) alternative and clean energy initiatives;
- (7) electricity, propane and gas heating cost increases as a result of renewable energy requirements;
- (8) proposed rules on greenhouse gas emissions;
- (9) a status report from Los Alamos National Laboratory on the progress of uranium legacy site cleanup and shipment of waste to WIPP;
- (10) uranium mining and uranium legacy mine contamination cleanup;
- (11) nuclear electric power as a clean energy option; and
- (12) geothermal power options.

The committee discussed whether the legislature's power to intervene in and review the rulemaking process is compatible with the separation of powers constitutional doctrine and the fact

that most states have determined that legislative veto of a rule requires the passage of a bill and its signing by the governor. Some states have passed constitutional amendments, but most have enacted measures that provide for the legislature to delay the effective date of a rule until the end of the subsequent legislative session to allow the legislature sufficient time to act on a rule change. This avoids the constitutional issue of separation of powers, the committee was told. For that reason, the committee authorized opening files to draft bills to:

(1) provide for review and approval of executive branch rules by the legislature during the next regular legislative session, following adoption of the rules, before the rules can go into effect (similar to House Business and Industry Committee Substitute for House Bill 310 in the 2008 regular legislative session);

(2) require financial impact analysis by the executive branch of all rules proposed by the executive;

(3) amend the existing statutory requirements for "renewable energy portfolio standards" to "clean energy portfolio standards", which would include nuclear energy fuel sources; and

(4) expand the role of the committee to provide oversight of the Department of Environment and the Energy, Minerals and Natural Resources Department, as provided in previous legislation sponsored by Representative John A. Heaton.

The committee also endorsed a letter regarding expansion of the purpose and capacity of WIPP to store radioactive material.

## REGULATORY PROCESS SUBCOMMITTEE

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The 2010 interim Regulatory Process Subcommittee consisted of members of three interim legislative committees: the Economic and Rural Development Committee, the Revenue Stabilization and Tax Policy Committee and the Courts, Corrections and Justice Committee. The subcommittee split its focus into two primary areas, both aimed at ameliorating the impact that state agencies' rulemaking has on public safety, economic development, consumers and the environment.

First, the subcommittee reviewed the work of the lieutenant governor's Model State Administrative Procedures Act Task Force. The task force, made up of a diverse group of state agencies and private stakeholders, presented draft legislation aimed at creating a fair and consistent rulemaking

process.

Second, the subcommittee considered agency rulemaking authority and ways that the legislature could exert its power when it finds that agencies have overstepped their rulemaking authority. Agencies, nonprofit organizations, providers and consumers gave presentations on the impact of agency rulemaking and ways to improve the process and the effects on all parties.

Finally, the subcommittee considered possible legislative action to achieve a fair and consistent rulemaking process and legislative oversight of agency rulemaking.

## **RETIREMENT SYSTEMS SOLVENCY TASK FORCE**

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The Retirement Systems Solvency Task Force was created in 2009 by House Judiciary Committee Substitute for House Education Committee Substitute for House Bill 573. The task force was made up of legislators, pension plan and Retiree Health Care Authority (RHCA) staff and representatives of employer and employee groups. The law called for the task force to study the actuarial soundness and solvency of the retirement plans of the Public Employees Retirement Association (PERA), the Educational Retirement Board (ERB) and the health care plan of the RHCA over a period of two years and to make recommendations to improve the solvency of each system.

During the 2010 interim, the task force met six times, continuing its 2009 evaluation of the retirement systems. In order to obtain an independent actuarial review of the PERA and ERB, the task force contracted for additional studies, analyses and comparisons with the actuarial firm Buck Consultants. The task force asked the directors of the PERA, ERB and RHCA to submit proposed legislation to address solvency concerns.

The PERA presented an "ideal plan", which would provide more sustainable, lower-costing retirement benefits for state and municipal employees hired on or after July 1, 2011. The RHCA reported that it did not need a legislative change to address solvency concerns, because its board has control of most of the moving parts that might need adjustment to improve the authority's solvency. The ERB made a number of recommendations, including increasing the minimum years of service required to be eligible for retirement and increasing contributions.

At its final meeting, the task force considered four bills and referred three of them to the Investments Oversight Committee with a recommendation that the committee endorse those bills.

Those bills included: 1) a bill to transfer judicial and magistrate docket fees to the general fund and to fund judicial and magistrate retirement through the general fund, thereby linking retirement funding to salaries rather than docket fees; 2) a bill to delay the existing statutory increases to ERB funding so that the employer contribution would increase from 10.9% to 13.9% over six years rather than the two years scheduled under current law; and 3) a bill to allow a PERA retiree to return to work and earn up to \$15,000 before the employee's retirement benefits would be suspended. The task force referred the fourth bill, the PERA ideal plan bill, to the Investments Oversight Committee without recommendation.

## REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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The Revenue Stabilization and Tax Policy Committee held seven meetings in 2010, including a one-day meeting in December. The committee was asked by the Government Restructuring Task Force to review several agencies for possible economies that could be achieved, but the agencies clearly needed to maintain personnel and funding to perform their assigned duties. The Taxation and Revenue Department (TRD) is responsible for collection of most of the tax revenue funding the state. It is therefore of paramount importance that the agency be able to collect, audit and enforce the taxation laws of the state to maximize collections at this time. The Department of Transportation presented information that concerned the committee a great deal regarding the condition of the state's roads if funding to maintain them is not available soon. The Motor Transportation Division of the Department of Public Safety also left the committee with the understanding that it provides services that aid in the collection of trip taxes, weight-distance taxes and other various fees that are channeled to the State Road Fund or to the general fund.

Dorothy Rodriguez, secretary-designate of taxation and revenue, started with the TRD in late June and attended her first Revenue Stabilization and Tax Policy Committee meeting after only her fifth day in that position. The TRD, nonetheless, was able to generate a chart of tax credits, deductions and exemptions, with other tax exceptions or exclusions included. The document provided the

*The committee determined that without a clearly stated and measurable purpose, analyzing the effectiveness of most tax benefits was not possible.*

expenditure on each tax benefit made by the state. The committee reviewed the economic development credits closely but was unable to look closely at the several low- and middle-income family tax benefits to determine how successful those benefits are. It was determined that without a clearly stated and measurable purpose, analyzing the effectiveness of most tax benefits was not possible. The committee decided to put tax credits on a review schedule that would allow time for the departments with the most information about the credits to begin gathering data on the use of those credits.

Because this was an election year, the TRD did not suggest legislation for the upcoming 2011 session. The committee reviewed 14 bills and endorsed nine, all of which are described in its final report.

## SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

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As were all interim committees, the Science, Technology and Telecommunications Committee was requested by the Government Restructuring Task Force to review the functioning of state agencies on which the interim committee primarily focuses and recommend restructuring formulas to the task force. In its discussion of restructuring state government, the committee spent most of its time considering the dilemma of the PRC. Because the commission is a constitutional body, any proposed changes are subject to voter approval, so there was considerable discussion of the complexities involved in its possible reorganization. Several members of the committee began their comments by saying that the PRC should be eliminated, but they quickly added to that sentiment the recognition that any serious proposal for eliminating it or changing its authority must recognize that its existing functions and mission must be accommodated. For example, where should the Insurance Division be relocated? The same could be asked about the Utility Division and the Fire Marshal Division.

Another significant question is the clarification of jurisdictional boundaries between the federal government and the state over the various utility authorities, particularly with regard to electric power generation, transmission and distribution. This industry, like the telecommunications industry, is undergoing rapid and significant structural change, and regulatory frameworks developed decades ago for previous technological paradigms no longer make sense in today's world with its rapidly evolving technologies.



The sense of the committee was that any changes to the PRC structure or its functions should be considered after a detailed review. The implications of haphazard legislation for narrow political purposes were discussed, and several comments were made about inconsistencies among the various laws enacted by previous legislatures, with some entities being covered by certain provisions in law and others exempted, or certain services covered while others are not.

The nature of how politics affects elected officials rather than appointed officials was also a focus of attention and raised the question, asked several times, about whether the legislature would err in creating an elected governing authority to replace appointed ones.

Whether corporate filings should be at the Office of the Secretary of State or at the PRC was another question discussed. The general consensus was that corporate filing is one function that should be housed at the PRC exclusively.

Transparency was discussed, and suggestions were made that the PRC should webcast all of its hearings and that all documents filed for cases before the commission should be available to the public online. Comments were made to the effect that the PRC is not responding to technological changes, either in its own business management or in its regulation of industry. Whether the PRC should regulate companies or services was asked, and there was a recognition that the legislature is to blame to some extent for the way it wrote the laws governing the PRC.

The quasi-judicial nature of the PRC was also discussed; it was considered to be a problem and should be rethought. In some ways, the PRC has been a moderating influence, and any reform should avoid unforeseen consequences that previous reform efforts clearly did not avoid.

The theme of the discussion was the need for:

- (1) careful evaluation of the structure and function of the PRC;
- (2) consistency in policies;
- (3) a replacement structure for the PRC should be in place before repeal or change;
- (4) a comprehensive or holistic rather than an incremental approach to policy-setting, whether the PRC or some other entity is doing it; and
- (5) credentialing of PRC commissioners or board members.

In a discussion of the Energy, Minerals and Natural Resources Department, the issue of oversight and legislative review of agency rules was the theme, as it was for the Radioactive and Hazardous Materials Committee.

Finally, E-911 was discussed at length with no real consensus. Some felt that the transfer of E-

911 to the Department of Public Safety made sense; others wanted it to stay at the Local Government Division of the Department of Finance and Administration.

The committee met six times, and each meeting was at the State Capitol. Testimony was heard on:

- (1) the state's information technology (IT) systems and the status of the Department of Information Technology;
- (2) interoperability among the state's data systems, the status of IT security measures and disaster recovery and business continuity concerns;
- (3) energy efficiency;
- (4) the status of renewable energy projects, including solar, wind farm and algae biofuel;
- (5) broadband status and telemedicine;
- (6) smart grid development;
- (7) the status of the New Mexico Renewable Energy Transmission Authority;
- (8) the status of Encanto Gateways (the supercomputer);
- (9) a Spaceport America update;
- (10) "horizon" technology research at Sandia National Laboratories and Los Alamos National Laboratory; and
- (11) venture capital perspectives on New Mexico's emerging technology enterprises.

## TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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The Tobacco Settlement Revenue Oversight Committee was created in statute as a joint interim legislative committee. The committee monitors the use of revenues received as a result of the Master Settlement Agreement (MSA) signed by the attorneys general of 46 states with the four largest tobacco companies in the United States — Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. The agreement was signed on November 23, 1998. The committee meets during the interims "to receive and review evaluations of programs" that receive appropriations of the tobacco revenues. Each year, the committee takes testimony regarding the performance results of programs funded and prepares recommendations for future funding. Those funding recommendations are

provided to the LFC on or before December 15 of each year.

The interim committee works closely with representatives of the New Mexico Attorney General's Office to ensure state compliance with the MSA. The attorney general is currently in arbitration with tobacco manufacturers over the state's enforcement efforts. If the state is found not to have diligently enforced its tobacco statutes in 2003, it is possible that New Mexico could be forced to pay back its entire allocable share of tobacco settlement revenue for that year (\$34 million). Tobacco manufacturers have also initiated challenges to the state's enforcement efforts in all subsequent years, making the state's total potential liability, according to the Attorney General's Office, close to \$263 million.

*If the state is found not to have diligently enforced its tobacco statutes in 2003, it is possible that New Mexico could be forced to pay back its entire allocable share of tobacco settlement revenue for that year, or \$34 million.*

The Tobacco Settlement Permanent Fund consists "of money distributed to the state pursuant to the Master Settlement Agreement entered into between tobacco product manufacturers and various states, including New Mexico". The Tobacco Settlement Program Fund consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50% of the revenues are retained in the permanent fund and the remaining 50% is placed in the program fund, from which revenues are appropriated primarily to the Department of Health, the Human Services Department and the University of New Mexico Health Sciences Center. In 2009, Senate Bill 79 amended the law to provide for an additional 50% distribution to the program fund for appropriations in fiscal years 2009 and 2010. In 2010, House Bill 79 amended the law to provide for an additional 50% distribution to the program fund for appropriation in fiscal year 2011.

Payments received under the MSA in April 2010 totaled just under \$41 million (\$40,949,708.41), approximately \$4 million (\$3,950,300) less than projected. As a result, the agencies receiving tobacco settlement funds had to return a proportionate share (7.9%) of their fiscal year 2010 appropriations. In July 2010, the Department of Finance and Administration reduced the allocations for the 2011 appropriations from the program fund by 10.3% as a result of revised tobacco settlement payment projections. If actual payments are higher than estimated, the allocations may be increased up to the lesser amount of the actual payments to the program fund or the appropriation.

The fiscal year 2010 ending market value of the permanent fund as reported by the State Investment Council was \$132.0 million. Approximately \$39.6 million in new revenue is projected for

fiscal year 2012, affording 50% of that amount, or \$19.8 million, for distribution to the program fund. The committee's recommendations were based on this projection.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for fiscal year 2012. The committee recommended that in fiscal year 2012, the same programs that received funding in fiscal year 2011 from the program fund be funded at original fiscal year 2011 funding levels (before the 10.3% reduction in allocations), with the exception of the Medicaid program. The committee recommended a reduction in the appropriation from the program fund to the Medicaid program to allow other programs receiving tobacco settlement funds to receive funding in fiscal year 2012 at original fiscal year 2011 appropriation levels.

#### WATER AND NATURAL RESOURCES COMMITTEE

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The Water and Natural Resources Committee was scheduled for five meetings during the 2010 interim, with all except the August meeting held in Santa Fe due to budget concerns. However, the committee did hold its August meeting in Las Cruces to address several issues specific to southern New Mexico.

Budget issues were also apparent when the state engineer reported that the adjudications program has a 30% vacancy rate in its legal and hydrographic survey staffing for fiscal year 2011 and a \$708,000 reduction in its 2011 budget appropriation. Other issues discussed during the interim that are affected by the dearth of state funds include numerous dams that require rehabilitation statewide, substandard levees in the middle Rio Grande region and the ongoing costs of a number of water projects and programs. There was some good news over the interim, with Congress approving the *Aamodt* and Taos water rights settlements, along with federal funding for those settlements and the Navajo settlement. Also of note was a proposed agreement between the Interstate Stream Commission and Intel for the eventual transfer of water rights owned by Intel to the strategic water reserve in exchange for the commission's coverage of Intel's offset obligations once the company stops using certain of its wells.

The committee endorsed five pieces of legislation this interim: three bills, one appropriation and one joint memorial.

A bill establishing the Utton Transboundary Resource Center and the Joe M Stell Ombudsman program at the University of New Mexico will be sponsored by Senator Cisco McSorley.

Senator Gerald Ortiz y Pino will sponsor a bill amending the Wastewater Facility Construction Loan Act to include mutual domestic water consumers associations in the definition of local authority. Enactment of the bill would make mutual domestic water consumers associations eligible to receive financial assistance for the installation and operation of wastewater facilities.

A bill expanding the scope of in-state purchasing preferences by state and local government agencies will be carried by Senator Timothy M. Keller.

Representatives Jeannette O. Wallace and Don L. Tripp will co-sponsor a bill to appropriate \$85,000 to the New Mexico Department of Agriculture to promote and develop the state's farmers' markets.

A joint house memorial recognizing that the revitalization and development of local and regional food systems are critical parts of promoting the health, well-being and economic vitality of rural and underserved urban communities will be carried by Representative Ben Lujan.



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